very dangerous weapon and so, gentlemen, I think you will find it very, very difficult to say that in striking the Imam with the iron he was striking in pursuance of the right of self-defence.

But, gentlemen, even if he went further than exercising his right of private defence he may well be guilty of something less than murder. He may be guilty of culpable homicide not amounting to murder and that of course is for you to say. You can look at it, the law looks at it, on one of two ways. If a man is attacked and if in self-defence he goes further than is necessary to defend himself and kills the attacker that is manslaughter.

Then again, if two persons get into a fight and in the course of the fight a fatal blow is struck, again that is manslaughter.

And so in practice in this case you will have to decide whether the killing amounted to murder or manslaughter and that will depend on whose story you accept."

It is quite clear from this passage that the learned trial judge left to the assessors the three alternative opinions of murder, culpable homicide not amounting to murder and acquittal. But in the passages which follow (in his summing-up) he repeated more than once that in his opinion there was, on the evidence, no alternative but murder or culpable homicide not amounting to murder.

It is, we think, clear from the opinions the assessors gave that they did not accept the story of the prosecution witnesses in its entirety and came to the conclusion that it was the deceased who started the fight. It was most important, bearing in mind that the appellant's defence was a plea of private defence, that the law on the question of private defence should be fully explained to the assessors, in particular the law regarding this right when the attacker had been disarmed and the weapon had passed from the attacker to the attacked.

The law in this country gives greater latitude to a person who is attacked than does the law in England. In England, if self-defence is to be successful, the attacked must attempt to disengage himself from the attack, and his killing the assailant is only excuseable if there was no other way of saving his life. The law which is applicable in this country is fully set out in *Alingan Kunhinayan & Anor. v. The Emperor*[1]. The learned Sessions Judge in that case made the following observation :—

"It is urged on behalf of the first accused that he was justified in the exercise of his right of private defence of his person in stabbing deceased when he attacked him with a knife. First accused had undoubtedly a right to defend himself but I think it is clear that he exceeded the right of private defence which he possessed. First accused was certainly not justified in wresting the knife from deceased and inflicting a dangerous wound in the chest. There is no reason, I think, to suppose that first accused could not have escaped further injury by resorting to less violence or by running away. It was not necessary for first accused's own preservation that he should have inflicted such grievous bodily harm."

The Court of Appeal commented on this passage as follows :—

"On the facts of the case we cannot agree with the view of the law taken by the learned judge. We do not think it can be said that the first accused exceeded the right of private defence. The learned judge suggests that the first accused could have escaped further injury by resorting to less violence or running away. But, this is placing a greater restriction on the right of private defence of the body than the law requires.

The principle applicable to a case like this is that laid down by Mayne:

> "But a man who is assaulted is not bound to modulate his defence step by step, according to the attack, before there is reason to believe the attack is over. He is entitled to secure his victory, as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if, in a conflict between them, he happens to kill, such killing is justifiable. And, of course, when the assault has once assumed a dangerous form every allowance should be made for one, who, with the instinct of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will be, not whether there was an actually continuing danger, but whether there was a reasonable apprehension of such danger."

The all important facts in connection with the question whether the first accused exceeded the rights of private defence of his body when he gave the stab with his knife which proved fatal to the deceased, are that the deceased was the first to use the knife and had inflicted a wound on the first accused which might well have proved fatal.

On the facts we are of opinion that the first accused did not exceed the right of private defence and that his conviction under section 304 and 326 of the Indian Penal Code cannot be upheld."

Accepting, as the assessors must have done, that it was the deceased who first attacked the appellant, we cannot but feel that, had the assessors been directed that if they believed that the one blow which the appellant gave to the deceased with the trident was for the purpose of preventing a renewed attack upon him, he was entitled to acquittal, the assessors might well have come to a different conclusion.

We consider that this appeal should be allowed. The conviction is accordingly quashed, the sentence set aside, and the appellant ordered to be released.

Appeal allowed.

In re ESTATE OF JOHN WALKER, DECD. MORRIS EDGAR v. Mrs. MARY ELIZABETH JUDSON.

[C. A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S) and Briggs, J.) February 11, 1953]

[K.L. — F.M. Civil Appeal No. 66 of 1952]

Limitation — Civil Law Enactment, 1937, s. 4(iii)(b).

The question raised by this appeal is whether the limitation period of six months prescribed by section 4

(iii)(b) of the Civil Law Enactment, 1937, begins to run on the appointment of an administrator in England, or does not begin to run until, by resealing of the Letters of Administration or otherwise, a personal representative is appointed in the Federation.

Section 4(iii)(b) reads as follows: "The cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation."

Held: the word "not later than six months after his personal representative took out representation" must be construed as referring to representation in the Federation.

COURT OF APPEAL.

M. Edgar for the appellant.

D. G. Rawson for the respondent.

Cur. Adv. Vult.

Mathew, C.J. : — The only point in this appeal is whether the learned trial Judge was correct in holding that the period of limitation of six months prescribed by section 4 (iii) of the Civil Law Enactment, 1937 began to run on the appointment of an administrator in England. The learned trial Judge came to this conclusion, taking the view that proceedings could have been taken against the administratrix of the estate as soon as letters of administration were taken out by her in England. This view does not appear to be supported by the rule set out in Williams on Executors (12th edition) at page 1235, which reads :—

"Unless he can be sued as executor de son tort or unless he has obtained a grant of probate or letters of administration in this country, a foreign personal representative cannot be sued in his official character in this country."

In my view, the words "not later than six months after his personal representative took out representation" must be construed as referring to representation in the Federation.

I would allow this appeal with costs here and the costs of the preliminary point in the Court below, and direct that the order of the High Court be set aside, and that the suit be heard and determined. The deposit of $500 should be paid out to the appellant.

Sir Charles Murray-Aynsley, C.J., (S.) : — I have had the opportunity of reading the judgment of the learned President of the Court with which I concur and have nothing to add.

Briggs, J. : — The question raised by this appeal is whether the limitation period of six months prescribed by section 4 (iii) (b) of the Civil Law Enactment, 1937, begins to run on the appointment of an administrator in England, or does not begin to run until, by resealing of the Letters of Administration or otherwise, a personal representative is appointed in the Federation.

The learned trial Judge held, in my view rightly, that the question must be considered from the point of view of possible proceedings in the Federation, and that there was no sufficient representation merely an action might have lain in England: but he considered that proceedings could have been instituted here against the English administratrix before the resealing. This seems to be contrary to the rule formulated in Williams on Executors, 12th Edition, page 1235, as follows :—

"Unless he can be sued as executor de son tort, or unless he has obtained a grant of probate or letters of administration in this country, a foreign personal representative cannot be sued in his official character in this country."

In my view the cases cited in support fully establish the principle that, even where proceedings can be served out of the jurisdiction, a personal representative appointed in a foreign country cannot be sued in this country in that representative capacity. If there is no local representative, the intending plaintiff must either obtain representation as a creditor or procure the appointment of an administrator *ad litem*. Until this is done there is no effective representation so as to enable the estate to be sued and limitation to run.

I think this construction is supported by the general principle that words in statutes are *prima facie* to be read in a sense applicable to the jurisdiction governed by the statute. In a local enactment, 'representation' should ordinarily mean 'representation effective in the Federation'. The argument from convenience supports the same view. If 'representation' means representation in a foreign country, representation in any foreign country must be sufficient, whether the plaintiff has a reasonable chance to know about it or not, and whether an action of the type intended would lie there or not.

I agree that the appeal should be allowed with costs here and costs of the preliminary point, that the order of the High Court must be set aside, and that the suit should be heard and determined on the basis that the defence of limitation fails. The deposit should be paid out to the appellant.

Appeal allowed.

CHONG YIK v. PUBLIC PROSECUTOR.

[A. Cr. J. (Storr, J.) February 12, 1953]

[J.B. — Criminal Appeal No. 23 of 1952]

Criminal Procedure Code (Cap. 6), s. 399 — Admissibility of report of Government Chemist.

In this appeal it was argued that the certificate of the Government Chemist was wrongly admitted in evidence by the learned President. It appeared that a copy of the report had not been supplied to the accused as required by the proviso to section 399(i) of the